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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	)	Group Art Unit:1615
Mariko OKAMOTO et al.	)	
Serial. No. : 09/667,420	)	Examiner: B. FUBARA
Filed: September 21, 2000	)	
For: GEL COMPOSITION AND ITS	)	
USE IN COSMETIC	)	
COMPOSITION AND THE LIKE	)	

DECLARATION UNDER 37 CFR § 1.132

Honorable Commissioner of Patents and Trademarks
Washington, DC 20231

SIR:

I, Mika INOUE, do hereby declare and say as follows:

1. I received a bachelor of Science in Chemistry from Rikkyo University on March 1988. In April 1988, I joined NIHON L'OREAL, and since then, I have been engaged in development of skin care products. I have been a skin care product development manager from January 2000.

2. I have reviewed the Final Office Action dated November 5, 2003, in which the claims were rejected under 35 U.S.C.103(a) as being unpatentable over JP 11-021227 and *Cernasov et al.* (US 5,976,510). The Examiner asserts that the motivation to combine the references and the requisite expectation of success lies in the desire to have a cosmetic composition with excellent moisture retention characteristics. Although I would not admit that the Examiner has established a *prima facie* case of obviousness, I will hereinafter present some results of comparative experiments in order to demonstrate the unexpected results of the combination of the present invention.

3. I have prepared Gel Compositions 1 to 8 each having ingredients shown in the following table:

Gel Composition	1	2	3	4	5	6	7	8
- Polyacrylamide-based polymer (Seppic: Sepigel 305)	2%			2%	2%	2%	2%	
- Carboxyvinyl polymer (Noveon: Carbopol 981)		0.3						
- Acrylate-based cross-linked polymer (Noveon: Pemulen TR-1)			0.3					
- Triethanolamine		0.3	0.3					
- Laureth-9 (Uniqema: Atlas G 4829 Pharma)								0.14%
- Fluorine compound-treated yellow iron oxide (Daito: PF-5 YELLOW 601)	0.51%	0.51%	0.51%					0.51%
- Fluorine compound-treated black iron oxide (Daito: PF-5 BLACK BL-100)	0.1%	0.1%	0.1%					0.1%
- Fluorine compound-treated red iron oxide (Daito: PF-5 RED R516L)	0.18%	0.18%	0.18%					0.18%
- Fluorine compound-treated titanium dioxide (Daito: Titanium Dioxide CR-50 PF-5)	6.21%	6.21%	6.21%					6.21%
- Untreated yellow iron oxide (BASF: Sicovit Jaune 10E172)				0.51%				
- Untreated black iron oxide (BASF: Sicovit Noir 85E172)				0.1%				
- Untreated red iron oxide (Sachtleben: Sicovit Brun ZP3569)				0.18%				
- Untreated titanium dioxide (Sachtleben: Hombitan Anatase FF Pharma)				6.21%				
- Silicone-treated yellow iron oxide (Miyoshi: SI-C33-8073-10)					0.51%			
- Silicone-treated black iron oxide (Miyoshi: SI-C33-134-10)					0.1%			
- Silicone-treated red iron oxide (Miyoshi: SI-C33-8075-10)					0.18%			

- Silicone-treated titanium dioxide (Miyoshi: SI-C47-051-10)					6.21%			
- Polyethylene-treated yellow iron oxide (Miyoshi: PI-Y-8)						0.51%		
- Polyethylene-treated black iron oxide (Miyoshi: PI-B-8)						0.1%		
- Polyethylene-treated red iron oxide (Miyoshi: PI-R-8)						0.18%		
- Polyethylene-treated titanium dioxide (Miyoshi: PI-TR-8)						6.21%		
- Amino acid-treated yellow iron oxide (Miyoshi: NAI-C33-8073-10)							0.51%	
- Amino acid-treated black iron oxide (Miyoshi: NAI-C33-134-10)							0.1%	
- Amino acid-treated red iron oxide (Miyoshi: NAI-C33-8075-10)							0.18%	
- Amino acid-treated titanium dioxide (Miyoshi: NAI-C47-051-10)							6.21%	
- Glycerin	2%	2%	2%	2%	2%	2%	2%	2%
- Preservative	0.8%	0.8%	0.8%	0.8%	0.8%	0.8%	0.8%	0.8%
- Cyclopentasiloxane	12%	12%	12%	12%	12%	12%	12%	12%
- Tocopheryl acetate	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
- Cyclopentasiloxane/dimethiconol	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
- Biosaccharide gum-1	2%	2%	2%	2%	2%	2%	2%	2%
- Purified water	balance	balance	balance	balance	balance	balance	balance	balance

4. Referring to the above table, Gel Compositions 1-5 correspond to the compositions 1-5 in the specification, and Gel Compositions 6-8 are newly added. Specifically, Gel Composition 1 is an inventive composition comprising Sepigel 305 as polyacrylamide-based polymer and fluorine compound-treated pigments. Gel Compositions 2-3 contain the same fluorine compound-treated pigments but with different types of polymeric gelling agents. Gel Composition 8 also contains fluorine compound-treated pigments and a non-ionic surfactant instead of a gelling agent. These Gel Compositions 2-3 and 8 correspond to the disclosure of *Cernasov et al.* in that they all contain the claimed fluorine compound-treated pigments. Thus, the comparison of Gel Composition 1 with Gel Compositions 2-3 and 8 indicates the significance of the inclusion of the claimed polyacrylamide-based polymer as a gelling agent over the prior art such as *Cernasov et al.*

On the other hand, Gel Compositions 4-7 contain the claimed polyacrylamide-based polymeric gelling agent, with pigments/fillers that are not treated or treated with different agents. Specifically, Gel Composition 4 contains non-treated pigments, so that it corresponds to the teachings of JP 11-0211227. Gel Compositions 5 and 6 contain silicone-treated pigments and polyethylene-treated pigments, both of which are hydrophobic treatments. Gel Composition 7 contains amino acid-treated pigments that are now deleted from the claimed scope of the present invention. The comparison with these Gel Compositions 4-7 would indicate the significance of the treatment of pigments/fillers.

5. I compared all of Gel Compositions 1-8, and found that Gel Composition 1 is excellent in all respects, but the others had unsatisfactory characteristics that are described in the following table:

Gel Composition	Result
1	A very refreshing gel with a very smooth and glossy appearance was obtained.
2	The resultant gel had a marbly appearance, unfit to serve as a product.
3	As a result of insufficient emulsification, pigments/fillers are scattered in a clear gel.
4	Resulted in a dirty mass of a cake-like appearance, excluding water and oil.
5	Resulted in a collapsing emulsification with dirty appearance.

	Pigments/fillers were not dispersed.
6	Fine pigments/fillers were scattered, so that the resultant gel was unfit to serve as a product.
7	Gelation occurred insufficiently, resulting in a reduced viscosity.
8	No gelation occurred, resulting in separation into two phases.

In order to allow one to confirm this assessment, I will hereinafter attach the color photographs for respective Gel Compositions 1-8.

Gel Composition 1

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

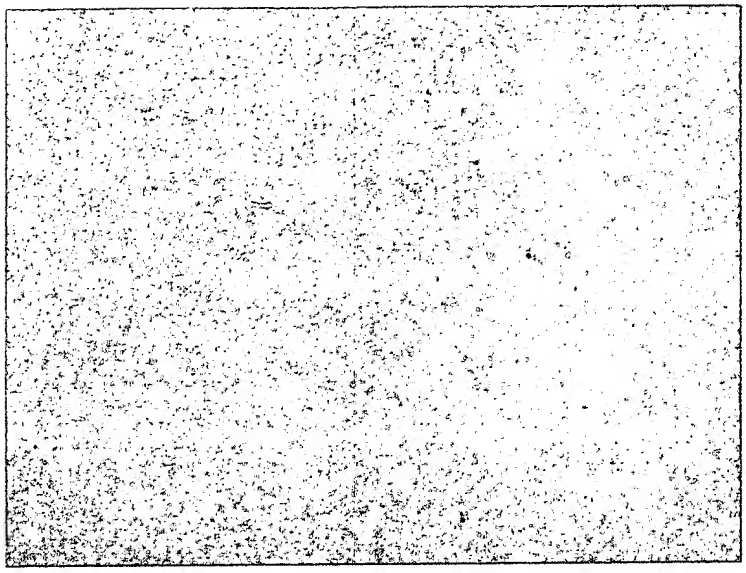


Photo of bulk on glass tray taken by digital camera
(Olympus Camedia C-2500L)

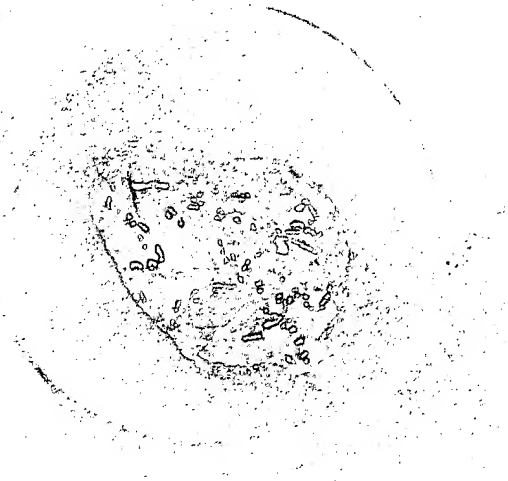
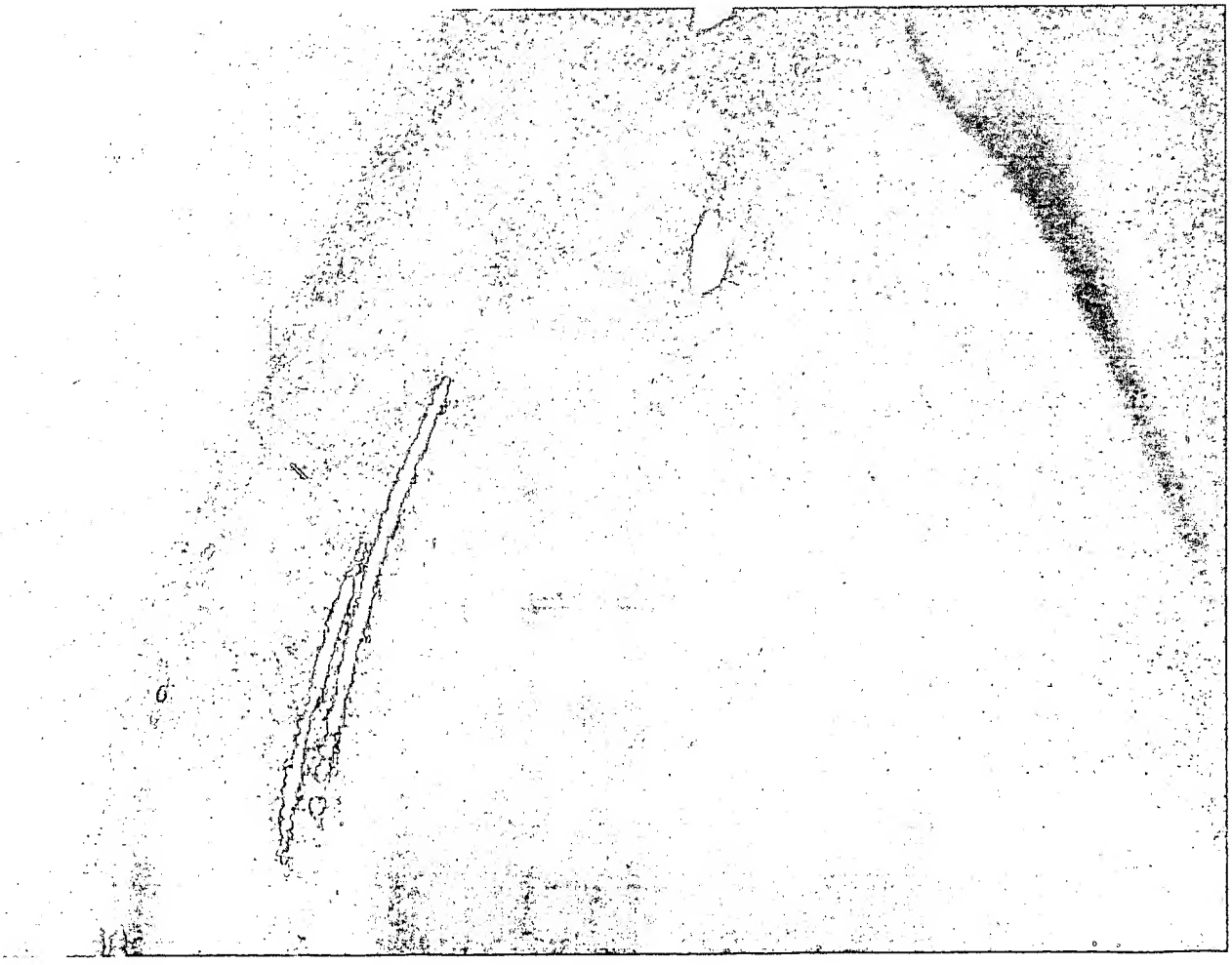


Photo of close up of above bulk taken by Moritex I scope USB.



Gel Composition 2

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

Photo of bulk on glass tray taken by digital camera (Olympus Camedia C-2500L)

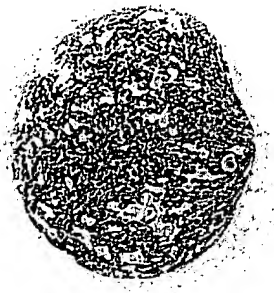
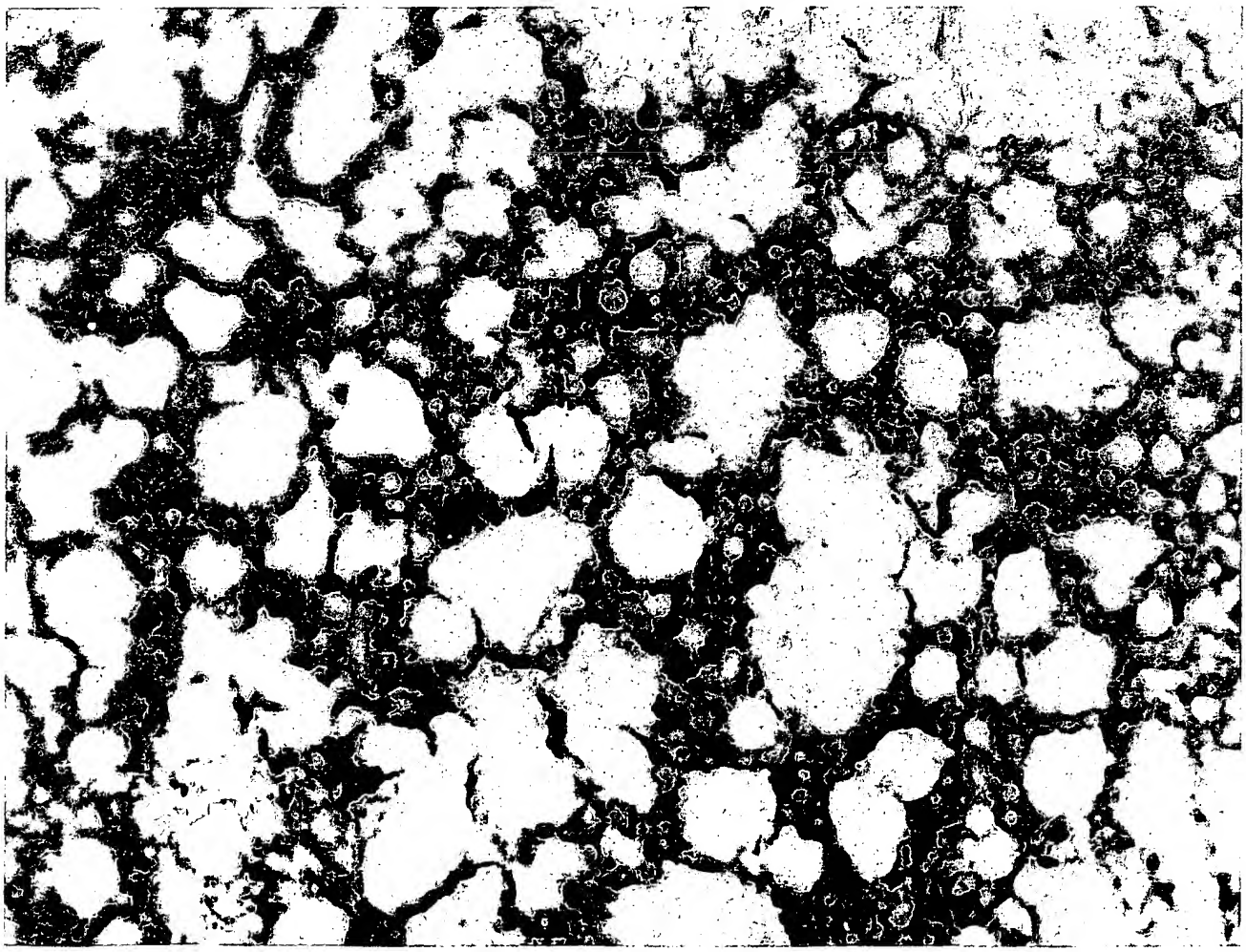


Photo of close up of above bulk taken by Moritex I scope USB.



Gel Composition 3

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

Photo of bulk on glass tray taken by digital camera
(Olympus Camedia C-2500L)

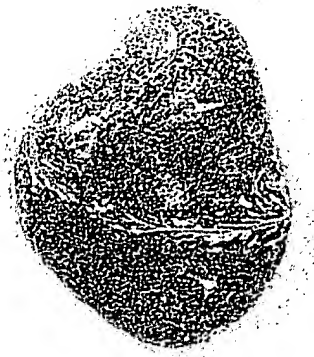
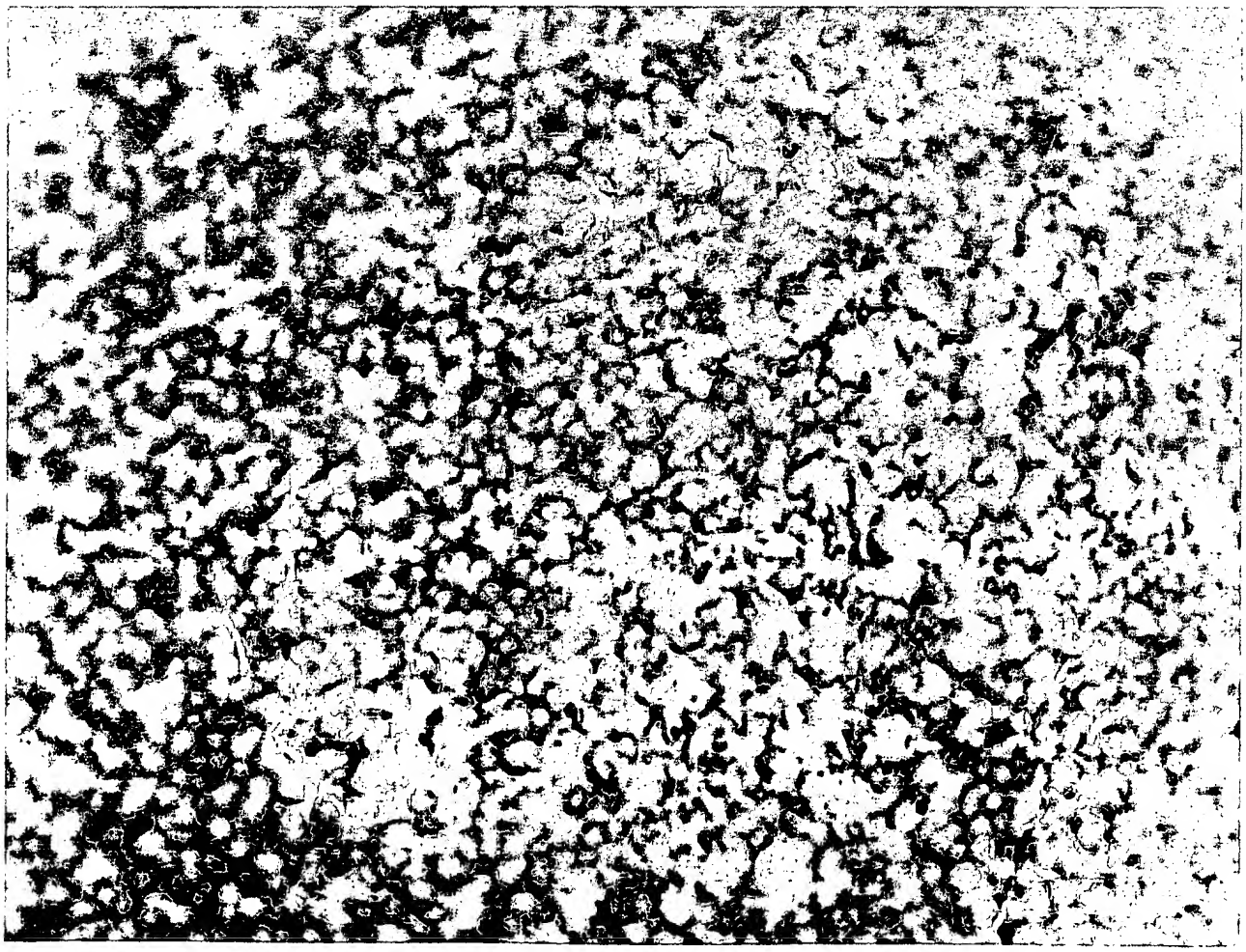


Photo of close up of above bulk taken by Moritex I scope USB.



Gel Composition 4

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

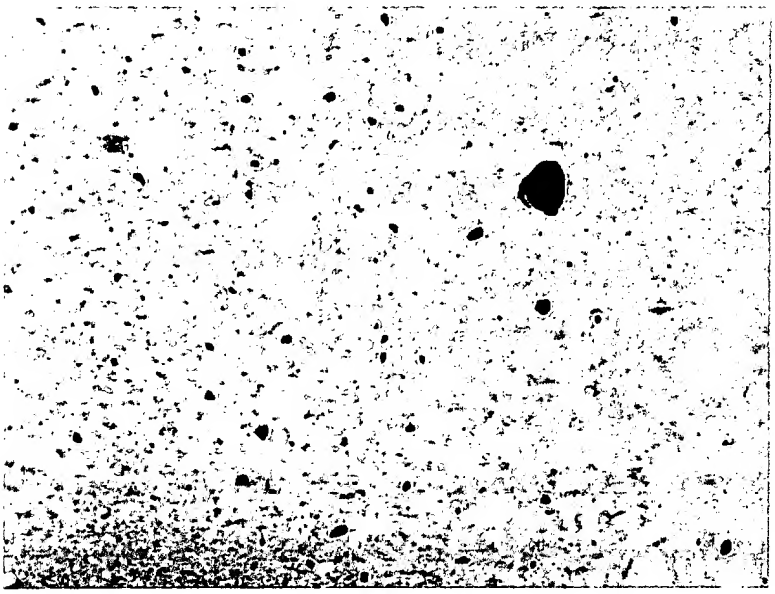


Photo of bulk on glass tray taken by digital camera
(Olympus Camedia C-2500L)

Photo of close up of above bulk taken by Moritex I scope USB.

Gel Composition 5

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

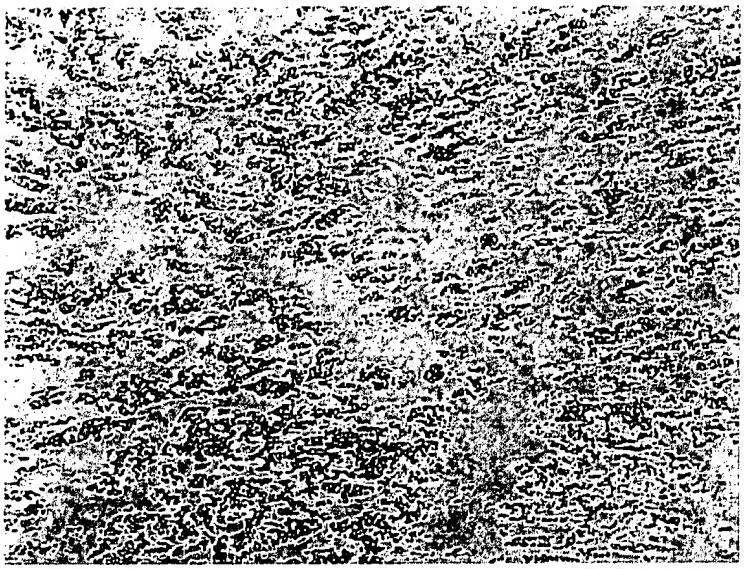
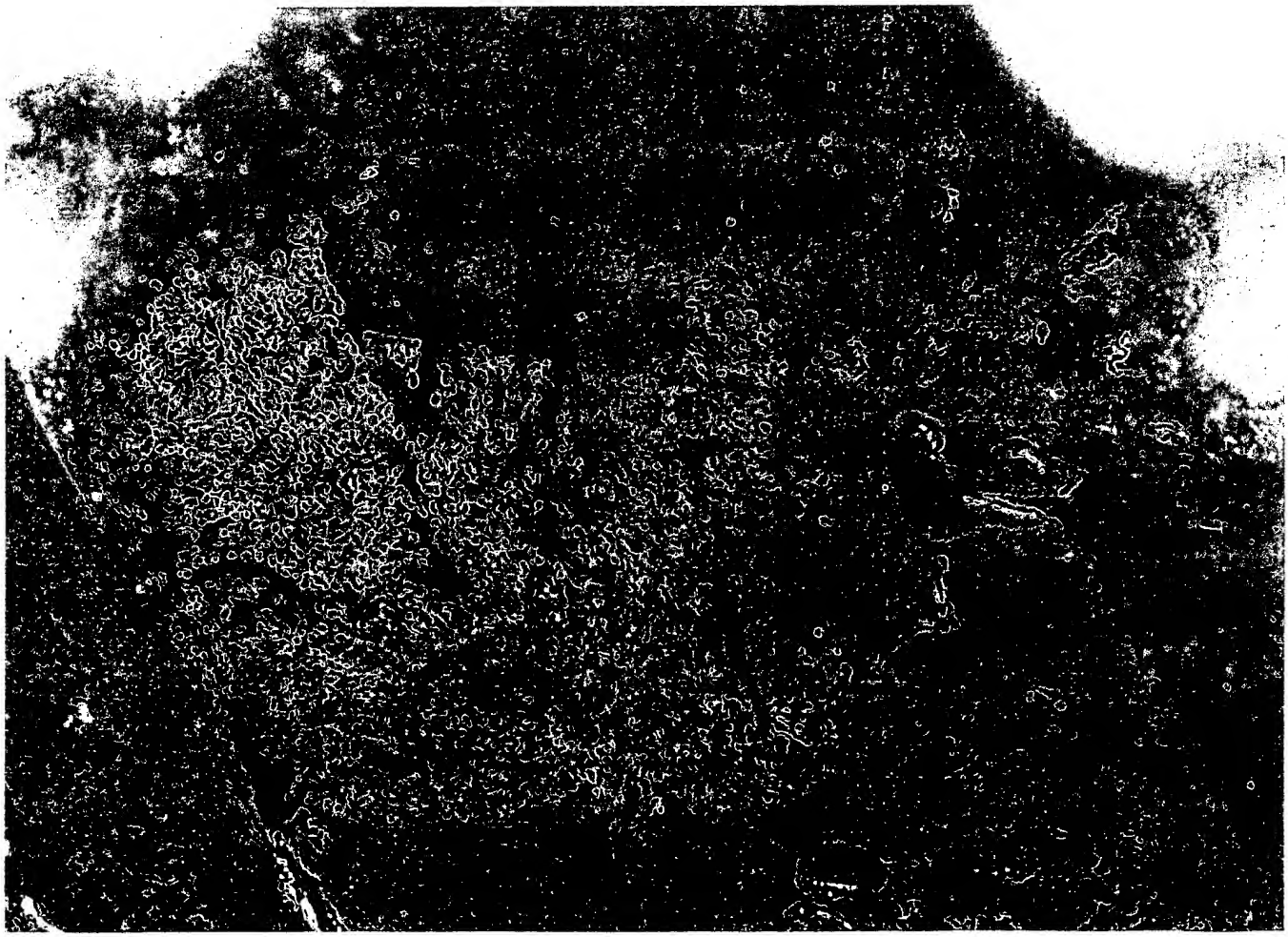


Photo of bulk on glass tray taken by digital camera
(Olympus Camedia C-2500L)

Photo of close up of above bulk taken by Moritex I scope USB.



Gel Composition 6

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

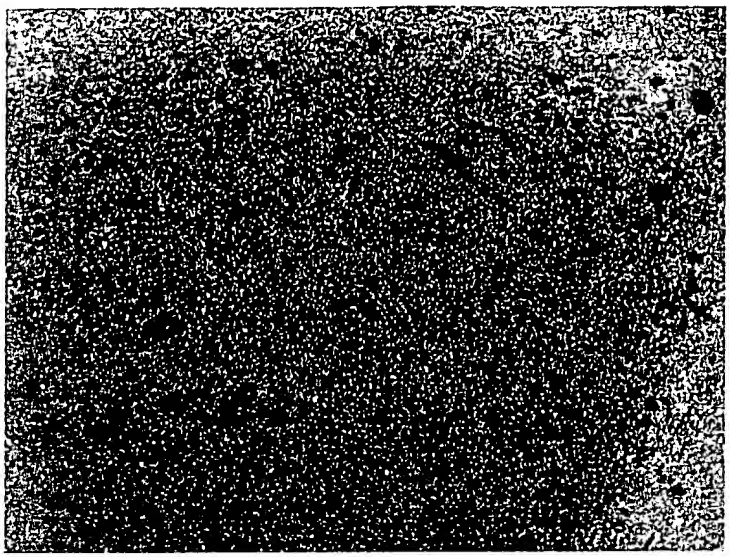


Photo of bulk on glass tray taken by digital camera
(Olympus Camedia C-2500L)

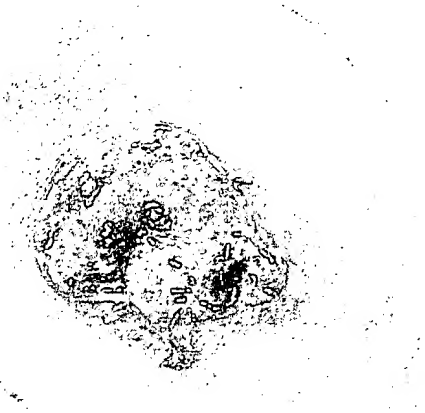
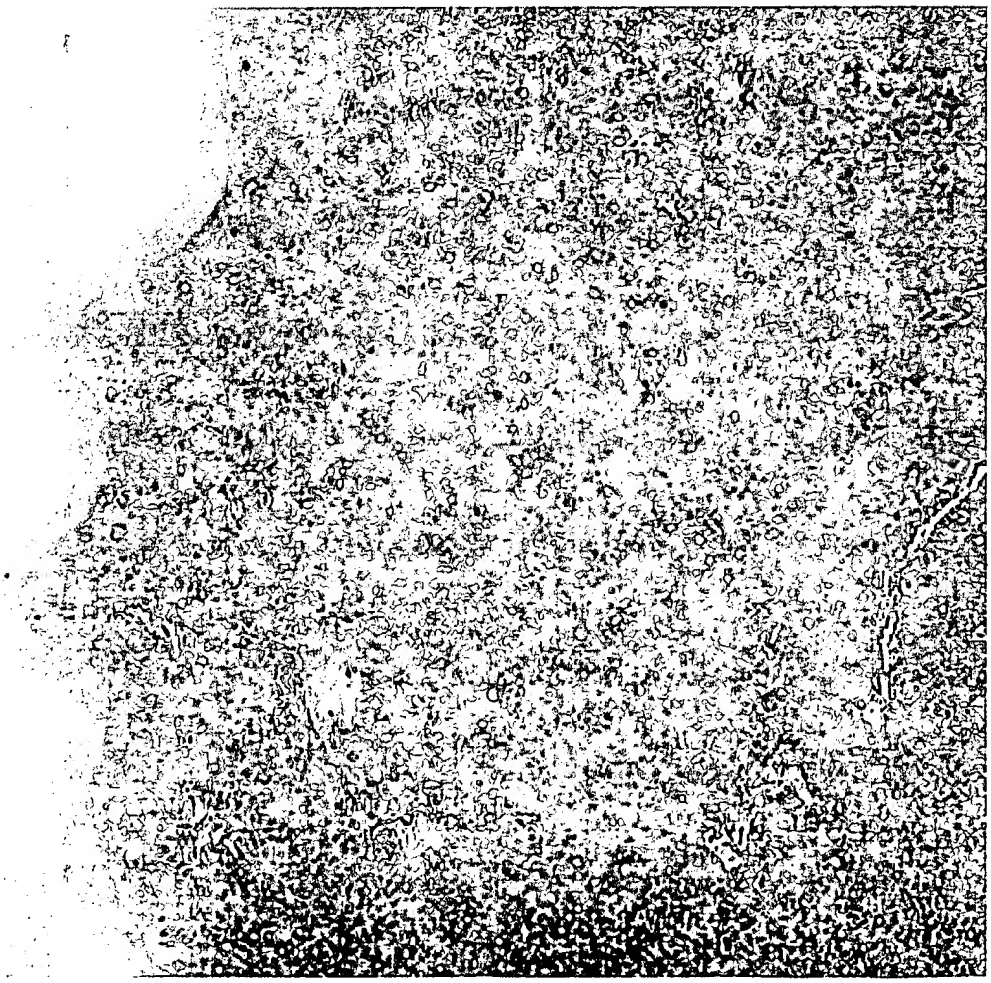


Photo of close up of above bulk taken by Moritex I scope USB.



Gel Composition 7

Photo of bulk between 2 slide glass taken by Moritex I scope USB.

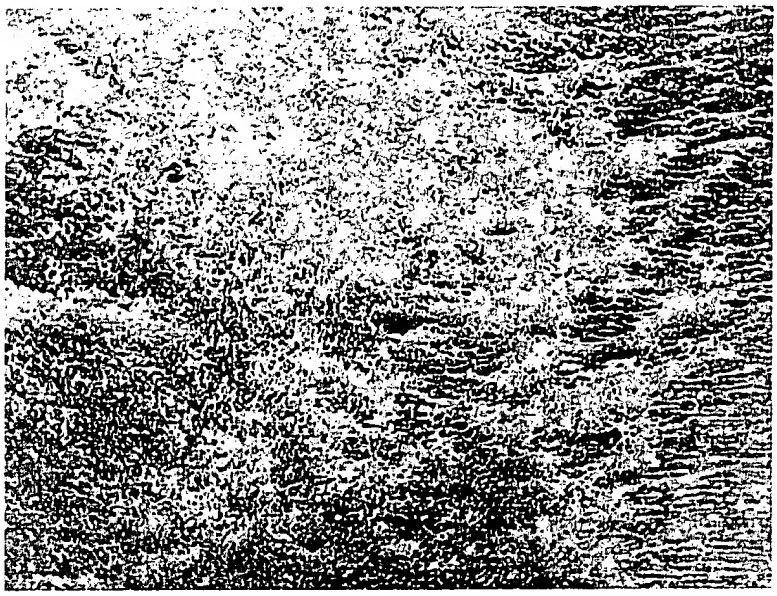


Photo of bulk on glass tray taken by digital camera
(Olympus Camedia C-2500L)

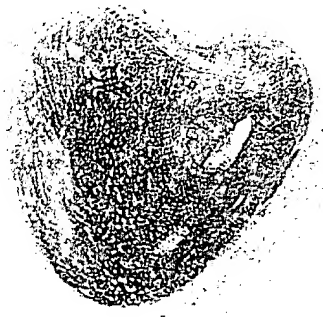
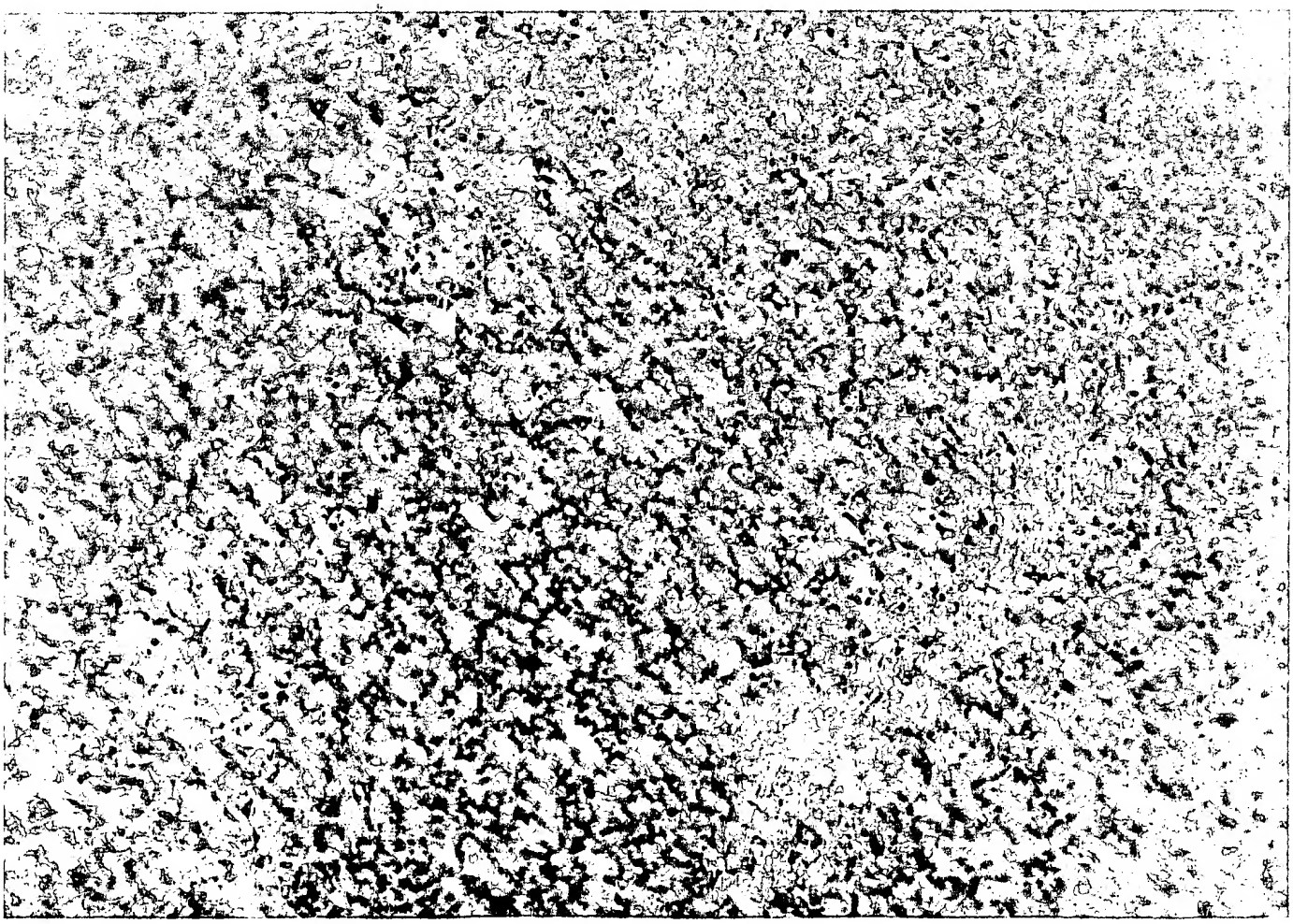


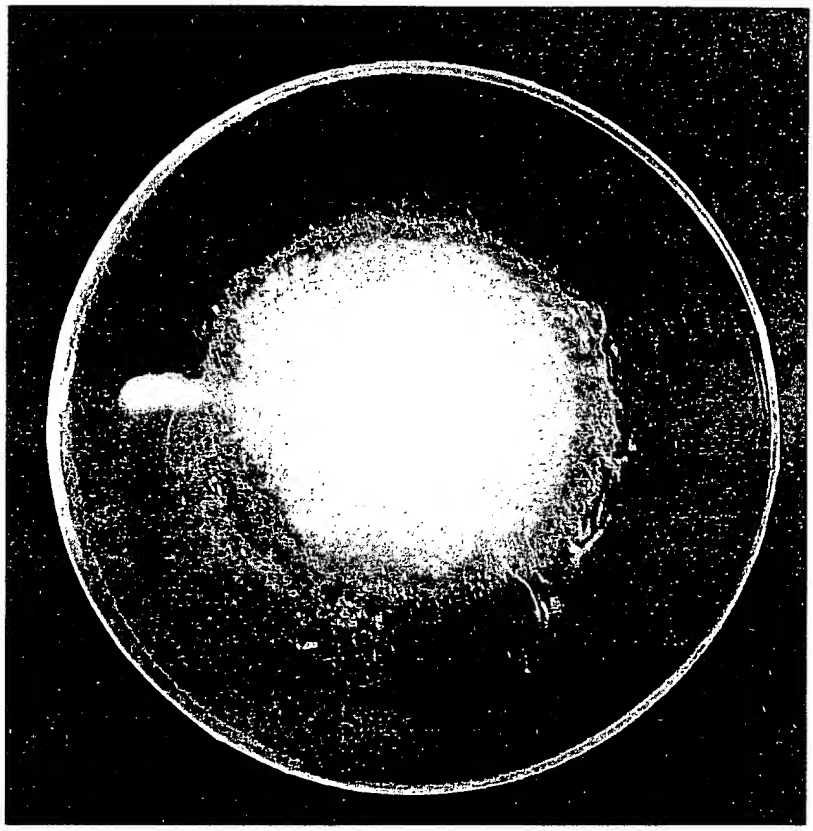
Photo of close up of above bulk taken by Moritex I scope USB.



Gel Composition 8

Doesn't gelify, separates into 2 phase. The glass bottle shown below is completely liquid bulk.

Photo of bulk on glass tray taken by digital camera
Completely liquid aspect.
(Olympus Camedia C-2500L)



6. In conclusion, I believe that the claimed combination exhibits unexpected results over JP 11-021227 and *Cernasov et al.*, thus the present invention is not obvious over these references.

7. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Mika INOUE

Dated: 23th February, 2004